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**Pro hac vice* admission to be sought.

Counsel for Plaintiff and the Putative Class

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TATIANA OLMOS, individually and on behalf of all others similarly situated,

Plaintiff,

v.

FIA CARD SERVICES, N.A., a national bank,

Defendant.

Case No. 3:15-cv-02786-BAS-BGS

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR CLASS
CERTIFICATION**

Judge: Hon. Cynthia A. Bashant

Magistrate: Hon. Bernard G. Skomal

Hearing Date: February 8, 2016
Courtroom: 4B

**NO ORAL ARGUMENT UNLESS
REQUESTED BY THE COURT**

NOTICE OF MOTION AND MOTION FOR CLASS CERTIFICATION

1 **PLEASE TAKE NOTICE** that on Monday, February 8, 2016 or as soon
 2 thereafter as counsel may be heard, in the United States District Court for the Southern
 3 District of California, Courtroom 4B, Suite 4145, 221 West Broadway, San Diego,
 4 California 92101, Plaintiff Tatiana Olmos will and hereby does move this Court
 5 pursuant to Federal Rule of Civil Procedure 23 to (1) enter and reserve ruling on her
 6 Motion for Class Certification; (2) allow for discovery to take place on class-wide
 7 issues; (3) grant Plaintiff leave to file a supplemental Memorandum of Points and
 8 Authorities in Support of her Motion for Class Certification upon the conclusion of
 9 class-wide discovery; (4) grant her Motion for Class Certification after full briefing of
 10 the issues presented herein; and (5) provide all other and further relief that the Court
 11 deems reasonable and just.

13 The basis for Plaintiff's Motion for Class Certification is that the prerequisites for
 14 class certification under Federal Rule of Civil Procedure 23(a), (b)(2) and (b)(3) are all
 15 satisfied in this case. With respect to the former, Rule 23(a)(1)'s numerosity
 16 requirement is satisfied because Plaintiff has identified a Class consisting of thousands
 17 of individual members. Rule 23(a)(2)'s commonality requirement is satisfied because
 18 whether the Class may recover turns on questions of law and fact common to the Class,
 19 including whether Defendant can be held liable under the Telephone Consumer
 20 Protection Act, 47 U.S.C. § 227 ("TCPA"), whether Defendant's text messages to
 21 Plaintiff and the Class were sent using an automatic telephone dialing system, whether
 22 those text messages were sent to cellular telephones, whether Plaintiff and the Class
 23 consented to the calls, and whether Plaintiff's claims are unique.

24 Rule 23(a)(3)'s typicality requirement and Rule 23(a)(4)'s adequacy requirement
 25 are also satisfied. Plaintiff's claims are typical of the other Class members inasmuch as
 26 she and the Class members each received the same unauthorized text messages from
 27 Defendant. And Plaintiff and her counsel will fairly and adequately protect the interests
 28 of the Class. Plaintiff has no interests antagonistic to those of the Class and her counsel

1 have extensive experience litigating similar TCPA class actions.

2 Finally, in satisfaction of the Rule 23(b)(3)'s predominance and superiority
3 requirements, the questions of law and fact common to the Class predominate over any
4 questions that may affect Class members on an individual basis, and the class action
5 mechanism is superior to any other available method to reach a fair and efficient
6 adjudication of the controversy at issue.

7 Plaintiff's Motion is based on this Notice of Motion and Motion for Class
8 Certification, the Memorandum of Points and Authorities file concurrently herewith, the
9 Declaration of Benjamin H. Richman filed concurrently therewith, the pleadings on file
10 in this matter, and evidence or argument that may be presented at or before the hearing
11 on this Motion.

12 Respectfully Submitted,

13 **TATIANA OLmos**, individually and on behalf
14 of all others similarly situated,

15 Dated: December 11, 2015

16 By: s/ Daniel G. Shay
One of Plaintiff's Attorneys

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